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chance.²⁵ Up to March 6, 1916, the first of these views represented the decided weight of judicial opinion; on that date the United States Supreme Court handed down three decisions²⁶ which entirely changed this aspect of affairs, by holding constitutional certain Florida and Washington statutes putting a prohibitive tax upon the use, or furnishing for use, in connection with a sale, of redeemable premium-stamps or coupons.²⁷ The court, speaking through Mr. Justice McKenna, finds that premium-giving schemes may well be thought to partake of the evil effects of gaming in that "they tempt by a promise of value greater than the article, and apparently not represented in its price, and it hence may be thought that thus by an appeal to cupidity lure to improvidence",²⁸ and it decides that whether or not they do so is "a matter of inquiry and of judgment that it is finally within the power of the legislature to make".²⁹ That these words are fraught with ominous possibilities for premium givers and takers throughout the land cannot well be doubted.³⁰

SOME FEATURES OF THE NEW CONSTITUTION OF MEXICO.—Perhaps it is not the function of the legislative commentator to speculate on the probable nullification of benign measures by unfavorable social and political conditions. But the student of Latin-American constitutional law must be prepared to apply to beautiful abstractions the brutal test of fact, if he would apprehend the true state of government.¹ Especially is this true at the present time of Mexico. To the task, then, of reviewing some of the more startling provisions of that amazing document promulgated February 5, 1917, and known

²⁵State v. Sperry & Hutchinson Co. (1910) 110 Minn. 378, 126 N. W. 120; Commonwealth v. Sisson (1901) 178 Mass. 578, 60 N. E. 385. Finds premium-giving to partake of the element of chance whenever the stamps are redeemable in something uncertain at the time of the purchase. State v. Hawkins (1902) 95 Md. 133, 51 Atl. 850; State v. Dalton (1900) 22 R. I. 77, 46 Atl. 234.

²⁶Rast v. Van Deman & Lewis, *supra*; Tanner v. Little (1916) 240 U. S. 369, 36 Sup. Ct. 379; Pitney v. Washington (1916) 240 U. S. 387, 36 Sup. Ct. 385.

²⁷1 Comp. Laws Fla. (1914) §§ 596m, 569 tttt; Wash. Laws (1913) c. 134, §§ 1, 2, 4.

²⁸Rast v. Van Deman & Lewis, *supra*, p. 365.

²⁹*Idem*.

³⁰In January and March, 1917, Bills No. 63 and 971 were introduced into the N. Y. State Senate, aiming to impose a practically prohibitive tax upon the furnishing and distribution of trading-stamps and premium coupons. It will be remembered that the anti-premium legislation already on the New York statute books has been held unconstitutional. People v. Gillson, *supra*; People v. Dycker, *supra*.

¹The Mexican journal "El Universal" is quoted as follows (referring to the Constitution of 1857, which that of 1917 replaces): "We have a constitution technically perfect, and that constitution has not served to govern us . . . During a half century we have adopted a perfect constitution, and, nevertheless, it was impossible for us to govern ourselves." 3 Amer. Bar Ass'n. Journal, 206-207.

as the Mexican Political Constitution,² we shall bring our knowledge, our shrewdness, our prejudices, it may be, but all with a view to ascertaining the probable effectiveness in the Mexico of to-day of the conventional constitutional guaranties and radical agrarian, labor, social welfare, anti-church and anti-foreign provisions of the new Constitution. The rolling sentences and unimpeachable sentiments must not blind us to the motives which led to their enactment and the circumstances under which they go into operation.

To Americans the agrarian law, contained in Article 27 of the new Constitution, is of the most vital interest. It declares vested in the Nation direct ownership of all principal waterways and of minerals—including solid mineral fuels, petroleum and all hydrocarbons.³ This nationalization of control over natural resources is further emphasized by the power given to the Nation to grant to foreigners the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, waters or mineral fuels, upon agreement not to invoke the protection of their Governments and to be considered Mexicans in respect to such property. This recognition of a special Mexican nationality with regard to property is a re-enactment to a certain extent of a provision in the old Constitution,⁴ but the latter had merely raised a presumption of nationality from the acquisition of real estate,⁵ while the new document makes a submission to Mexican jurisdiction a condition pre-requisite to such acquisition. Mexicans are to be preferred to foreigners in the granting of concessions,⁶ Within a zone of 100 kilometers from the frontiers, and of 50 kilometers from the sea coast, no foreigner may under any conditions acquire direct ownership of lands and waters.⁷ The division

²Constitución Política de los Estados Unidos Mexicanos, firmada el 31 de enero de 1917 y promulgada el 5 de febrero del mismo año. Linotipografía de "El Universal", Avenida Madero 36, Mexico, D. F. It has been called "the most radical and revolutionary body of laws that has ever been enacted and put into operation in the history of human government". 3 Amer. Bar Ass'n. Journ. 205. A translation by H. N. Branch has been published in *The Mexican Review*, Vol. 1, No. 6 (March, 1917).

³*los combustibles minerales sólidos; el petróleo y todos los carburos de hidrógeno sólidos, líquidos o gaseosos.* In view of the vast American investments in Mexican coal and oil fields, this assumption of control by the Federation is exceedingly important. It is submitted that the true purpose of this and other so-called anti-foreign provisions is not to exclude American capital from Mexico, but to make it pay heavily for its privileges to the present bankrupt government.

⁴Art. 30, subd. III, of Constitution of 1857. For best English text of this document, see Dodd, *Modern Constitutions*, vol. II, pp. 39-78.

⁵The United States government, in diplomatic correspondence, consistently refused to permit this provision of the Mexican Constitution of 1857 to operate to force involuntary change of allegiance on American citizens. 3 Moore, *International Law Digest*, 304-307.

⁶Art. 32.

⁷Art. 27. The use of the ambiguous word "adquirir" (acquire) raises some perplexing questions. Does it apply to acquisition by inheritance as well as to acquisition by purchase? and if so, is the foreign heir cut off completely, or is he given a reasonable time within which to dispose of the land?

of the large landed estates⁸ decreed by Article 27, and nominally intended as a measure to encourage small proprietorships, is a blow to foreign as well as native landlords in Mexico, and will very probably result in the leasing back to the great proprietors of the real property bought at forced sales, particularly in those parts of the Mexican plateau where land is available only for ranching purposes owing to the scarcity of water.

Religious establishments fare even worse than foreigners under the new Constitution. Not only are they deprived of the rights to acquire land⁹ and to direct primary education,¹⁰ restrictions already in force to some extent; but church buildings are declared the property of the Nation,¹¹ the State legislatures are given power to limit the number of ministers of religious creeds according to the needs of each locality (and only a Mexican by birth can be such minister—a thrust at foreign missionaries), the corporate existence of churches is not recognized, and priests are forbidden to take any part in the political life of the country.¹² Marriage is declared a civil contract, appertaining to the exclusive jurisdiction of the civil authorities.¹³

The labor and social welfare provisions are perhaps the most remarkable of all. Article 28 excepts associations of laborers organized to protect their own interests from the general prohibition against monopolies; and a subsequent article expressly recognizes the legality of peaceful strikes. Lockouts are lawful only when necessary to maintain prices reasonably above the cost of production; and the authority to decide whether such an emergency exists, as well as to mediate in disputes between labor and capital, is vested in a board of conciliation and arbitration, to consist of an equal number of representatives of the workmen and of the employers, and of one representative of the Government.¹⁴ The Congress and State Legislatures are required to pass the most progressive program of social legislation conceivable, containing, among other reforms, an eight-hour law for men, restriction of hours of labor of women and children, a minimum wage law, equal compensation to men and women for equal services, profit-sharing by employees in agricultural, commercial, manufacturing and mining industries, double wages for overtime, workmen's compensation, proper housing conditions for workmen, the establishment of public markets, free municipal employment bureaus, and governmental encouragement of old age, invalidity and unemployment insurance associations.¹⁵

Broad guaranties of liberty and justice abound in this remarkable document: contracts of labor for more than one year are unen-

⁸This measure, like many others, is an incorporation into the Constitution of a policy already instituted by legislative decree of the First Chief of the Constitutionalist Régime. See 3 Amer. Bar Ass'n. Journ. 207.

⁹Art. 27, also Art. 130.

¹⁰Art. 3.

¹¹Art. 27.

¹²Art. 130.

¹³*Ibid.* Divorce was first officially permitted in Mexico under a Carranza decree. 3 Amer. Bar Ass'n. Journ. 207.

¹⁴See 17 Columbia Law Rev. 174, for a general discussion of Mediation and Arbitration statutes in other jurisdictions.

¹⁵All the foregoing provisions are contained in Art. 130.

forceable to the prejudice of the party rendering the services,¹⁶ no law or authority is to have the right to establish censorship,¹⁷ instruction is to be free,¹⁸ cruel and unusual punishments are forbidden,¹⁹ etc. etc. But some of these provisions are pitfalls for the unwary. "No law shall be given retroactive effect to the injury of any person whatsoever,"²⁰ is not a paraphrase of the prohibition of *ex post facto* laws under the Constitution of the United States,²¹ as is shown by the inclusion in the Transitory Articles of an authorization to the present First Chief to punish offenders against the order of February, 1913.²² The deprivation of life, liberty and property save by means of a suit prosecuted before the established tribunals and in compliance with established rules of procedure, is forbidden;²³ but the superficial resemblance to "due process of law" is very misleading, since the prohibition is clearly not on the legislature at all, and a person injured by the operation of a federal statute would seem to be precluded from attacking its constitutionality on the ground of violation of due process, and relegated to his private remedy through the writ of "amparo."²⁴

The establishment of a Public Health Service depending directly on the President of the Republic, with very broad powers vested in the sanitary authorities,²⁵ is among the most enlightened of all the new provisions; and in this connection the encouragement offered to the campaign against alcoholism is noteworthy.²⁶ It is made the duty of every Mexican to compel the attendance at school of his children under fifteen years of age, and to attend himself the meetings called by the town council for civic instruction and military training.²⁷ A penal system based on labor as a means of regeneration is created.²⁸

¹⁶Art. 5.

¹⁷Art. 7.

¹⁸Art. 3.

¹⁹Art. 22. Cf. U. S. Constitution, Amendments, Art. 8.

²⁰*A ninguna ley se dará efecto retroactivo en perjuicio de persona alguna.*

²¹U. S. Constitution, Art. 1, § 9. *Ex post facto* laws are expressly prohibited by 38 of our State Constitutions. See Index Digest of State Constitutions (1915) p. 678.

²²Artículos Transitorios, Art. 15.

²³Mr. Branch inserts in his translation "due process of law", but it is submitted that the words "sino mediante juicio seguido ante los tribunales previamente establecidos, en el que se cumplan las formalidades esenciales del procedimiento y conforme a las leyes expedidas con anterioridad al hecho" are not susceptible of such an interpretation.

²⁴Art. 107. This unique writ is said to combine the essential features of *habeas corpus*, *certiorari*, and *mandamus*. See The Mexican Review, Vol. 1, No. 6 (March, 1917), p. 17, note.

²⁵Art. 73, subd. XVI. See also Art. 11.

²⁶Art. 117, also Art. 73, subd. XVI. The former provision is mandatory: "The Federal Congress and the State Legislatures shall forthwith enact laws against alcoholism."

²⁷Art. 31, subds. I, II.

²⁸Art. 18.

The most elaborate precautions are taken to prevent utilization of the military power to obtain political prominence. No candidate for Congress or the Presidency is eligible for election unless he has resigned from active service in the army ninety days immediately prior to his election;²⁹ and in view of the recent history of Mexico the reader will be edified to learn that among the qualifications for President is this: "He shall not have taken part, directly or indirectly, in any uprising, riot, or military coup".³⁰

²⁹Art. 55, subd. IV; Art. 82, subd. V.

³⁰Art. 82, subd. VII: "No haber figurado, directa o indirectamente, en alguna asonada, motín o cuartelazo."